IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 180 of 2006
With
CIVIL APPLICATION No. 7746 of 2006
In
APPEAL FROM ORDER No. 180 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJIV TRADERS PVT. LTD.
Versus
ASHABEN ROHITBHAI MEHTA AND OTHERS

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Appearance :
MR TS NANAVATI with MR BHARAT R PANDYA for Appellant.
MR AJ PATEL with MR SHITAL R PATEL for Respondent Nos.1 - 3.
MR PRASHANT G DESAI for Respondent No.4.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 21/02/2007

ORAL JUDGMENT

The appellant is the original plaintiff of Regular Civil Suit

No.399/2005. It is the case of the plaintiff in the aforesaid suit that plaintiff is a private limited company and it owns Final Plot Nos.614/A and 607 paiki situated in Navrangpura area of Ahmedabad city. To carry out the object of the company, the plaintiff company has given said land owned by it to one Shri N.H.Kapadia Education Trust. Said trust has constructed a school building on the said land and is running one of the prominent schools of Ahmedabad city and at present more than 3,000 students starting from nursery upto standard 12 are studying in said school in English and Gujarati medium. It is also the case of the plaintiff that to reach at the land owned by the plaintiff company, i.e., to reach at the school, approach road is identified as Final Plot No.613, consisting of 30 ft. wide road. It is a private road and the owners of Final Plot No.612 and the plaintiff holding Final Plot No.614 paiki and 607 paiki have the right to ingress and egress. However, by a document dated 3/3/2005, the owners of Final Plot no.612 being the owner of Final Plot No.613 has transferred his right in said Final Plot no.613 to the present plaintiff. It is also the case of the plaintiff that the owner of Final Plot no.612 and 614, i.e., defendant nos.1 to 3 have their independent gates on the main road, through which the vehicles and other day to day utility is being done. A small gate has been installed on the sides of Final Plot no.613, however, said gates are not in use and it remains closed. It is also the case of the plaintiff that it has acquired 10 ft. road from main C.G.Road till its boundary with the land owner of Final Plot No.614, i.e., defendants no.1 to 3. It is also the case of the plaintiff that 10 ft. road acquired is identified in the map annexed in the list with red boarder. It is also the case of the plaintiff that defendants no.1 to 3 have agreed to sell Final Plot No.614 paiki to one Bakery Group of Builders and they have planned to construct high-rise commercial building. It is also the case of the plaintiff that the plaintiff do not have any other way for ingress and egress to its plot. On this and other such grounds aforesaid suit was filed

for declaration and permanent injunction.

2) In the aforesaid suit, an application for interim injunction was pressed into service with a prayer that defendants no.1 to 3 be restrained from using the property bearing Final Plot no.613 as approach road to the commercial building on proposed Final Plot no.612 and 614 paiki and that defendants no.1 and 3 may be restrained from using the property bearing Final Plot no.612 and 614 paiki. It is also prayed that defendants no.1 to 3 may be restrained from demolishing the wall in question.

3) After hearing both the sides, learned trial Judge has dismissed injunction application vide his order dated 22-6-2006. Being aggrieved by the said order, original plaintiff has preferred this Appeal from Order.

4) At the time of hearing of this appeal, learned advocates Mr.T.S.Nanavati appearing for the appellant-original plaintiff and Mr.A.J.Patel appearing for original defendants no.1 to 3 submitted that the contesting parties to the suit have decided to settle the interim controversy and it is agreed that the contesting parties to the suit shall abide by agreement dated 20-6-1994. Said agreement was entered into between the predecessor-in-title of the plaintiff as well as defendants. Said agreement is placed on record. It is further submitted by both the aforesaid learned advocates that their respective clients will abide by aforesaid agreement during the pendency of the suit. It is prayed by both the learned advocates that this Appeal from Order may be disposed of by directing the parties to the litigation to act as per the agreement dated 20-6-1994.

5) Since the parties have, inter se, agreed to abide by the agreement

dated 20-6-1994, it is not necessary for this Court to deal with pleadings of the parties in this Appeal from Order in detail. Since it is prayed that this Appeal from Order may be disposed of in view of the consensus prevailing between the parties, this Appeal from Order is disposed of accordingly by setting aside the order of the trial Court and the original plaintiff and defendants no.1 to 3 are directed to abide by agreement dated 20-6-1994. However, this is only a tentative arrangement during the pendency of the suit. It is clarified that the trial Court may decide the suit on its own merits and in accordance with law. At the time of deciding the suit, trial Court may consider the effect of agreement dated 20-6-1994.

6) Accordingly, this Appeal from Order is disposed of by substituting the order of the trial Court in above terms. It is clarified that this order is passed with the express consent of plaintiff and defendants no.1 to 3 and this Court has not expressed any opinion on the merits of the issue. No order as to costs.

7) In view of above order on main Appeal from Order, no order on Civil Application No.7746 of 2006. Rule issued in Civil Application is discharged with no order as to costs.

(P.B.Majmudar, J.)

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